

**Staff
Summary
Report**



**To: Mayor & City Council
Through: City Manager**

**Agenda Item Number 10
Meeting Date 06/20/02**

**SUBJECT: INTERGOVERNMENTAL AGREEMENT FOR TERMINATION
OF SAMPACT TRUST**

PREPARED BY: C. Brad Woodford, City Attorney (350-8229)

BRIEF: Request approval of an IGA which will terminate the City of Tempe's responsibility as Trustee for the SAMPACT Trust.

COMMENTS: ARIZONA GOVERNMENTAL TRAINING SERVICE (0305-02).
Request approval of an IGA which will terminate the City of Tempe's responsibility as Trustee for the SAMPACT Trust.

Document Name: (20020620casg01) Supporting Documents: Yes.

SUMMARY: In 1980, several East Valley cities formed SAMPACT by a Joint Powers Agreement to provide training at reduced cost to the cities. In 1989, the City of Tempe became the Trustee of the Trust by Council action. The training center has been known as AGTS since that time and has functioned independently providing training, not only to governmental agencies but to private businesses as well over the past many years. Because SAMPACT was operating independently with private clients, it has been difficult for the City of Tempe to administer its fiduciary duty as Trustee. All cities have now agreed to terminate the original joint powers agreement which formed both SAMPACT and the Trust in accordance with the IGA attached. The cities will receive substantial discounts for training for the next five years (up to \$20,000 for the City of Tempe) in return for its original contribution to SAMPACT.

FISCAL NOTE: .None.

RECOMMENDATION: Approve and authorize Mayor to sign the Intergovernmental Agreement.

WHEN FILED WITH THE
ARIZONA SECRETARY OF STATE
RETURN TO:

Steven W. Moore, Esq.
City Attorney
City of Yuma
180 West 1st Street
Yuma, Arizona 85364

INTERGOVERNMENTAL AGREEMENT

AMONG

**CITY OF CHANDLER
CITY OF GLENDALE
CITY OF MESA
CITY OF SCOTTSDALE
CITY OF TEMPE
CITY OF YUMA**

and

ARIZONA GOVERNMENTAL TRAINING SERVICE AGENCY

and

AGREEMENT WITH

AGTS, INC., an Arizona Nonprofit Corporation

This Intergovernmental Agreement among the Cities of Chandler, Glendale, Mesa, Scottsdale, Tempe and Yuma, each a municipal corporation organized under the laws of the State of Arizona (individually each a "City" and collectively, the "Cities"); and the Arizona Governmental Training Service Agency, a governmental agency jointly controlled by the Cities (the "Agency"); and including an Agreement with AGTS, Inc., an Arizona nonprofit membership corporation to be formed prior to the Effective Date specified below ("AGTS"); is made and entered into by and among the Cities, the Agency and AGTS (collectively the "Parties"), to be effective as of the Effective Date specified below (in its entirety, this "Agreement").

RECITALS

A. In 1980, several Arizona cities entered into Small Arizona Municipalities Program to Assist City Training (SAMPACT) Joint Powers Agreements ("SAMPACT Agreements") pursuant to A.R.S. § 11-952 for the purpose of creating the Arizona Governmental Training Service Agency (the "Agency") to provide training specifically designed for public agencies and their employees (the "Business").

B. The Cities are all of the current signatories to SAMPACT Agreements.

C. The financial affairs of the Agency are administered by a Trustee pursuant to the SAMPACT (AGTS) Trust dated May 19, 1982 (as amended to date, the "Trust"). The City of Tempe is the current Trustee for the Agency, pursuant to an amendment executed June 8, 1989 by the Agency as Trustor and the City of Tempe as Trustee.

D. The Business is operating on a self-sufficient basis, and the Cities believe that it is now appropriate and in their mutual best interests to terminate the SAMPACT Agreements and the Trust.

E. Certain management level employees of the Agency have formed AGTS as an Arizona nonprofit corporation, to acquire the assets and assume the liabilities of the Business in order to continue to provide training services to governmental agencies and also to private businesses, and the Cities and the Agency wish to transfer the assets of the Business to AGTS and have AGTS assume the liabilities from the operation of the Business under the terms and conditions set forth in this Agreement.

NOW, THEREFORE, in consideration of the above recitals, the mutual promises that follow, and other good and valuable consideration, the receipt and legal sufficiency of which are hereby acknowledged, the Parties do hereby agree as follows:

AGREEMENT

1. **Effective Date.** This Agreement shall be filed with the Arizona Secretary of State within ten days after it has been executed by all Parties. This Agreement shall be effective as of 11:59 P.M. June 30, 2002 (the "Effective Date").

2. **Transfer of Assets.**

2.1. **Description of Assets.** As of the Effective Date, the Cities and the Agency hereby convey to AGTS, and AGTS hereby accepts and assumes, all of the right, title and interest of the Cities and the Agency in and to all of the assets owned by the Cities and the Agency that are used by the Agency in the operation of the Business, including without limitation all assets located at the Agency's administrative office located at 621 South 48th Street, Suite 103, Tempe, Arizona 85281, and all assets located at the Agency's learning center located at 501 South 48th Street, Suite 105, Tempe, Arizona 85281 (collectively, the "Business Premises"), including without limitation all:

(i) *fixtures, furniture and equipment*, including without limitation all furnishings, décor, kitchen appliances and small wares, computer equipment, audio visual equipment, telephone system, copier and other office equipment;

(ii) *inventory and supplies*, including without limitation training materials and manuals, tapes, textbooks, and marketing materials including catalogs;

(iii) *cash, investments and receivables*, including without limitation cash on hand, bank checking and savings accounts, certificates of deposit, investment securities and accounts, accrued and unpaid interest and dividends, membership fees,

customer deposits and prepayments, accounts receivable, credits, prepaid expenses, security deposits, employee advances, and scholarship funds;

(iv) *leases and other contracts*, excluding all insurance contracts and policies, but including without limitation the real estate lease for the Business Premises between the Agency and Airport Business Center, L.L.C., an Arizona limited liability company, dated January 9, 2001 and expiring on February 28, 2009, as amended to date (the "Premises Lease"); and employee and independent contractor agreements; and

(v) *intangible assets*, including without limitation licenses, permits, intellectual property, software and software licenses, trade names, trademarks, service marks, domain names and addresses, logos, and memberships.

2.2. Condition. All assets are transferred to AGTS "**AS IS.**" The Cities and the Agency make no representations or warranties to AGTS regarding the condition of the assets.

2.3. Consent of Lessors. AGTS will use its good faith best efforts to obtain the consents of the lessor of the Premises Lease, and the lessors of all other leases to the transfers listed in Section 2.1(iv) above; *provided, however*, that AGTS shall have no obligation to incur any additional financial obligation in order to obtain such consents, and *provided further* that no person associated with AGTS shall have any obligation to guaranty the obligations of AGTS under any lease.

3. Assumption of Liabilities. As of the Effective Date, AGTS hereby assumes all of the obligations and liabilities of the Cities and the Agency from the operation of the Business, both prior to and after the Effective Date, including without limitation payables, lease payments, taxes, employee compensation and benefits, and contract payments.

3.1. Employees. As of the Effective Date, the employees of the Agency will no longer be employed by the Agency. As of the Effective Date, AGTS may, at its option, employ any or all of the former employees of the Agency upon such terms as AGTS and the employee may agree.

3.2. Insurance. As of the Effective Date, all of the insurance contracts between the Agency and its insurance carriers shall be cancelled. As of the Effective Date, AGTS shall be obligated to obtain its own worker compensation and liability insurance.

4. Membership Fee Waivers. For the five fiscal years beginning July 1, 2002 and ending June 30, 2007, annual membership fees in AGTS will be waived for each of the six Cities. The annual membership fee is currently \$250. If the membership fee is not increased, the value to each City would be \$1,250 for the five year period. AGTS may change its membership fees at any time, but the entire annual membership fee will be waived for each City for the five year period. Membership allows each City to purchase seats in AGTS public seminars at reductions of between \$20 and \$100 per seminar off retail non-member rates. Memberships, and the rights to reduced rates for public seminars, are not transferable in whole or in part by the Cities.

5. In-House Seminar Discounts.

5.1. Maximum Annual Discounts. For the five fiscal years beginning July 1, 2002 and ending June 30, 2007, each City will receive a discount of \$175 off the State of Arizona contract rate (which all Arizona cities are eligible to receive) for each full-day in-house seminar it schedules with AGTS, subject to the annual maximums set forth in the chart below. This discount will not apply to in-house seminar trainer travel fees, in-house seminar class materials, or design, development or consulting work billed on an hourly basis. This discount will not apply to public seminar fees. This discount represents a savings of 12.7% from the current State rate of \$1,375, and a 31.4% savings from the current private sector retail rate of \$1,750. The discounted \$1,200 rate (for each full-day in-house seminar) will not be increased for the Cities through June 30, 2004. Thereafter, for the fiscal years 04-05, 05-06 and 06-07, the discounted rate for the Cities will be the then current State contract rate less \$175. The Cities may use their discounts in increments for full or half-day in-house seminars. A seminar for 3.5 or fewer hours of instruction time shall count as a half day. A seminar for more than 3.5 hours of instruction time shall count as a full day. The total amount of discounts that each City may use each fiscal year is set out in the following chart:

Annual Caps per City on Discounts for Full-Day In-House Seminars					
1st Year (02-03)	2nd Year (03-04)	3rd Year (04-05)	4th Year (05-06)	5th Year (06-07)	Total
\$5,250 (30 full-day seminars)	\$4,375 (25 full-day seminars)	\$3,500 (20 full-day seminars)	\$3,500 (20 full-day seminars)	\$3,500 (20 full-day seminars)	\$20,125 (115 full-day seminars)

5.2. Transfers. One or more discounts for full or half-day in-house seminars may be transferred to one or more other Arizona governmental entities, at any time or from time to time. Any such transfer(s) will only be valid if AGTS is given written notice signed by an authorized representative of the City making the transfer, specifying the number of full or half-day in-house seminar discounts being transferred, the applicable fiscal year, the full name of the governmental entity receiving the transfer, and a contact name and telephone number for the recipient. Any such notice must be received by AGTS at least five business days before the program is scheduled by the recipient. Upon receipt of any such transfer notice by AGTS, the discount(s) transferred will be deemed used for purposes of revenue sharing calculations pursuant to Section 6 below (even if the recipient never uses the discount(s)).

IN-HOUSE SEMINAR TRAINING DISCOUNTS FOR FISCAL YEARS 1 AND 2, AND 50% OF SUCH DISCOUNTS FOR YEARS 3, 4 AND 5, MUST BE USED IN THAT FISCAL YEAR OR THEY WILL BE FORFEITED.

6. Revenue Sharing.

6.1. Conditions. During the third, fourth and fifth fiscal years of this agreement (04-05, 05-06 and 06-07), each of the Cities may independently elect to share in certain AGTS revenues in lieu of receiving discounts on in-house training seminars. Revenue sharing would occur **only if** AGTS (1) had fiscal year gross revenue exceeding \$1.2 million (the amount of

AGTS' gross revenue in fiscal year 00-01) **and if** (2) AGTS had minimum reserves of cash and cash equivalents of at least \$127,500 (an amount equal to AGTS' estimated overhead expenses for the three month period of July 1, 2002 through September 30, 2002), which amount is subject to adjustment each year for inflation. The adjustment for inflation shall be calculated by using the United State Department of Labor, Bureau of Labor Statistics, Consumer Price Index, Urban Wage Earners and Clerical Workers, United States City Average (the "Index"), and multiplying the current reserve amount by a fraction, the denominator of which is the Index for June 2002 (the "Base Index"), and the numerator of which is the Index for the month immediately prior to the date the adjustment is made (the "Current Index"). This formula is also expressed as:

$$\text{Current Reserve Amount} \times \frac{\text{Current Index}}{\text{Base Index}} = \text{Adjusted Reserve Amount}$$

6.2. AGTS Financial Statements. AGTS will provide each City with a copy of its unaudited financial statements for the fiscal year ending June 30, 2002, and for each of the five fiscal years this Agreement is in effect, by no later than August 15th following the end of the fiscal year. While this Agreement is in effect, each City shall have the right, at its own expense and upon reasonable notice to AGTS, to inspect and audit the books and records of AGTS.

6.3. Amount. If a City elects revenue sharing and the conditions in Section 6.1 are satisfied, each City electing revenue sharing will receive 5% of the amount of AGTS' gross revenue exceeding \$1.2 million, with a maximum distribution to each City of 50% of the unused portion of that City's in-house seminar training discounts for that fiscal year, plus any amounts carried forward as provided in Section 6.5 below. If sufficient funds are not available to pay each City the total amount due to it for any fiscal year, the amount of gross revenue in excess of \$1.2 million will be distributed pro rata among the Cities based on the amounts to which each is entitled.

6.4. Due Date. Revenue sharing funds shall be paid by AGTS to the Cities on or before August 15th following the end of the applicable fiscal year.

6.5. Carry-Forwards. If a City elects the revenue sharing option and does not receive all the funds to which it is entitled for any given fiscal year, either because the conditions for revenue sharing in Section 6.1 above are not met, or because there are insufficient funds to make all payments to the Cities, the unpaid amount will accrue and carry forward to the following year. However, after the payments made on or before August 15, 2007 for the fifth fiscal year of this Agreement, all unpaid revenue sharing obligations of AGTS shall be completely cancelled, and no City shall thereafter have any claim to any share of the revenues of AGTS.

**THERE IS NO GUARANTEE THAT AGTS WILL EVER HAVE
SUFFICIENT REVENUES TO MAKE REVENUE SHARING
PAYMENTS TO THE CITIES.**

Examples of how revenue sharing would work are shown in the following charts:

Example A: A City elects to use only the in-house seminar discounts.

	1 st Yr. Cap	2 nd Yr. Cap	3 rd Yr. Cap	4 th Yr. Cap	5 th Yr. Cap	Totals
Training Discounts Available	\$5,250	\$4,375	\$3,500	\$3,500	\$3,500	\$20,125
Training Discounts Used	\$5,250	\$4,375	\$3,500	\$3,500	\$3,500	\$20,125
Maximum Revenue Share [SUBJECT TO AVAILABLE FUNDS] (50% of unused training discount)	0	0	NA	NA	NA	NA
Total Value	\$5,250	\$4,375	\$3,500	\$3,500	\$3,500	\$20,125

Example B: A City uses a portion of its available in-house seminar discounts.

	1 st Yr. Cap	2 nd Yr. Cap	3 rd Yr. Cap	4 th Yr. Cap	5 th Yr. Cap	Totals
Training Discounts Available	\$5,250	\$4,375	\$3,500	\$3,500	\$3,500	\$20,125
Training Discounts Used	\$3,000	\$2,500	\$1,500	\$2,125	\$1,500	\$10,625
Maximum Revenue Share [SUBJECT TO AVAILABLE FUNDS] (50% of unused training discount)	0	0	\$1,000	\$687.50	\$1,000	\$2,687.50
Total Value	\$3,000	\$2,500	\$2,500	\$2,812.50	\$2,500	\$13,312.50

Example C: A City uses only the revenue sharing option.

	1 st Yr. Cap	2 nd Yr. Cap	3 rd Yr. Cap	4 th Yr. Cap	5 th Yr. Cap	Totals
Training Discounts Available	\$5,250	\$4,375	\$3,500	\$3,500	\$3,500	\$20,125
Training Discounts Used	0	0	0	0	0	0
Maximum Revenue Share [SUBJECT TO AVAILABLE FUNDS] (50% of unused training discount)	0	0	\$1,750	\$1,750	\$1,750	\$5,250
Total Value	\$0	\$0	\$1,750	\$1,750	\$1,750	\$5,250

7. Representations of Cities. Each City hereby warrants and represents to the other Cities, and to the Agency and AGTS, that: (1) the execution, delivery and performance of this Agreement has been duly authorized and approved by the City in compliance with all applicable

laws, regulations and ordinances; (2) this Agreement has been duly executed and delivered by an authorized representative of the City on its behalf; and (3) this Agreement is enforceable against the City in accordance with its terms.

8. Representations of AGTS. AGTS hereby warrants and represents to each of the Cities and to the Agency that: (1) AGTS is a nonprofit membership corporation duly organized, validly existing and in good standing under the laws of the State of Arizona; (2) AGTS has the power and authority to enter into and perform its obligations under this Agreement; (3) the execution, delivery and performance of this Agreement has been duly authorized and approved by the Board of Trustees of AGTS in compliance with the Articles and Bylaws of AGTS and all applicable laws; (4) this Agreement has been duly executed and delivered by an authorized officer of AGTS on its behalf; and (5) this Agreement is enforceable against AGTS in accordance with its terms.

9. Representations of the Agency. The Agency hereby warrants and represents to each of the Cities and to AGTS that all taxes due and owed by the Agency have been paid before being delinquent.

10. Terminations.

10.1. SAMPACT Agreements. Subject to winding up as provided in Section 11 below, each of the SAMPACT Agreements signed by each of the Cities is hereby terminated as of the Effective Date, and thereafter no Party shall have any further rights or obligations thereunder.

10.2. Trust. Subject to winding up as provided in Section 11 below, the Trust is hereby terminated as of the Effective Date, and thereafter neither the Cities as beneficiaries, the Agency as trustor, nor the City of Tempe as trustee shall have any further rights or obligations thereunder.

10.3. Agency. Subject to winding up as provided in Section 11 below, the Agency is hereby dissolved and terminated as of the Effective Date.

11. Further Action and Documents. Each of the Parties hereby authorizes and directs its officers and designated representatives to take all actions necessary or desirable, both before and after the Effective Date, to consummate and carry out the provisions of this Agreement, including without limitation the execution and delivery of any and all additional documents and the performance of any and all acts that may be necessary or desirable to complete the transfers of assets and assumptions of liabilities provided for in Sections 2 and 3 above, terminate the SAMPACT Agreements, terminate and wind up the affairs of the Agency and the Trust, and otherwise carry out the intent of this Agreement.

12. Indemnification. AGTS hereby agrees to defend, indemnify and hold the Agency and each of the Cities, and their officers, employees and agents, harmless from and against any and all claims, demands, suits, actions or proceedings of any kind or nature (including without limitation reasonable attorneys' fees), including damages to property or injuries to or the death of any person(s), including employees or agents of the Agency and each of the Cities, and including without limitation workers' compensation claims ("Claim(s)"), resulting from or arising

out of the SAMPACT Agreements, the Trust, the Premises Lease (as defined in paragraph 2.1(iv) above), or the conduct of business by the Agency, or by AGTS; provided, however, that nothing herein shall relieve any City from its obligations to pay AGTS for past or future services provided to the City by the Agency or AGTS; and provided further that AGTS shall not be obligated to indemnify any City with respect to any Claim resulting from acts of negligence or willful misconduct by the City or its officers, employees or agents.

13. Duration. This Agreement shall terminate when all obligations of all the Parties hereto have been fulfilled, but in any event no later than September 30, 2007.

14. Notices.

14.1. Methods of Delivery. All communications required or permitted to be given hereunder shall be in writing and shall be deemed to have been duly given upon actual delivery, or when delivered by telecopy (provided a hard copy is sent by regular United States mail within 24 hours), or one business day after being sent by overnight commercial courier service for next business day delivery, or five days after being deposited in the United States mail, for certified or registered delivery, return receipt requested, postage prepaid.

14.2. Addresses. Notices to the Parties shall be delivered to them at the addresses set forth below with their respective signatures.

14.3. Change of Address. Any Party may designate a change of address at any time by written notice to the others.

15. Interpretation. This Agreement contains the entire understanding between the Parties with respect to its subject matter, and supercedes all prior negotiations and oral and written agreements. This Agreement may be amended only by a written document signed by the authorized representatives of each of the Parties affected by the amendment. The waiver of any breach of this Agreement shall not be deemed to amend this Agreement and shall not constitute a waiver of any other or subsequent breach. Headings are for convenience and shall not affect interpretation. Words in this Agreement shall be deemed to refer to whatever number or gender the context requires. This Agreement shall be construed and governed by the laws of Arizona. If any provision of this Agreement shall be declared invalid or unenforceable, that provision shall be deemed modified to the extent necessary to make it valid and enforceable, or if it cannot be so modified, then severed, and the modified or remaining provisions shall remain in full force and effect. This Agreement shall be binding upon and inure to the benefit of the Parties hereto and their successors and assigns.

16. Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, and all of which taken together shall be deemed a single Agreement.

IN WITNESS WHEREOF, each of the Parties has executed this Agreement to be effective as of the Effective Date specified in Section 1 of this Agreement.

Intergovernmental Agreement
(Termination of SAMPACT Agreements
and Transfer of AGTS Assets)

Effective Date:
June 30, 2002
Page 9

AGTS, INC.
621 South 48th Street, Ste. 103
Tempe, Arizona 85281
Att'n: President
Facsimile: (480) 966-6325

By: _____
Its: _____

**ARIZONA GOVERNMENTAL
TRAINING SERVICE AGENCY**

By: _____
Its: _____

ATTEST:

Title: _____

I have reviewed the foregoing Agreement and
have determined that it is in proper form and is
within the powers and authority granted under
the laws of the State of Arizona.

Title: _____

Date: _____, 2002

Intergovernmental Agreement
(Termination of SAMPACT Agreements
and Transfer of AGTS Assets)

Effective Date:
June 30, 2002
Page 10

CITY OF CHANDLER

Att'n: _____
Facsimile: _____

By: _____
Its _____

ATTEST:

Title: _____

I have reviewed the foregoing Agreement and
have determined that it is in proper form and is
within the powers and authority granted under
the laws of the State of Arizona.

Title: _____

Date: _____, 2002

CITY OF GLENDALE

Att'n: _____
Facsimile: _____

By: _____
Its _____

ATTEST:

Title: _____

I have reviewed the foregoing Agreement and
have determined that it is in proper form and is
within the powers and authority granted under
the laws of the State of Arizona.

Title: _____

Date: _____, 2002

Intergovernmental Agreement
(Termination of SAMPACT Agreements
and Transfer of AGTS Assets)

Effective Date:
June 30, 2002
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CITY OF MESA

City Manager
P.O. Box 1466
Mesa, Arizona 85211
Facsimile: _____

By: _____
Its _____

ATTEST:

Title: _____

I have reviewed the foregoing Agreement and
have determined that it is in proper form and is
within the powers and authority granted under
the laws of the State of Arizona.

Title: _____

Date: _____, 2002

Intergovernmental Agreement
(Termination of SAMPACT Agreements
and Transfer of AGTS Assets)

Effective Date:
June 30, 2002
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CITY OF SCOTTSDALE

Att'n: _____
Facsimile: _____

By: _____
Its _____

ATTEST:

Title: _____

I have reviewed the foregoing Agreement and
have determined that it is in proper form and is
within the powers and authority granted under
the laws of the State of Arizona.

Title: _____

Date: _____, 2002

CITY OF TEMPE

Att'n: _____

Facsimile: _____

By: _____

Its _____

ATTEST:

Title: _____

I have reviewed the foregoing Agreement and
have determined that it is in proper form and is
within the powers and authority granted under
the laws of the State of Arizona.

Title: _____

Date: _____, 2002

Intergovernmental Agreement
(Termination of SAMPACT Agreements
and Transfer of AGTS Assets)

Effective Date:
June 30, 2002
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CITY OF YUMA
180 West 1st Street
Yuma, Arizona 85364
Att'n: _____
Facsimile: _____

By: _____
Its _____

ATTEST:

Title: _____

I have reviewed the foregoing Agreement and
have determined that it is in proper form and is
within the powers and authority granted under
the laws of the State of Arizona.

Title: _____

Date: _____, 2002